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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,878	01/14/2004	Jeffrey S. Meteyer	D/A3359	5192
41030 7590 10/06/2008 ORTIZ & LOPEZ, PLLC P. O. BOX 4484 ALBUQUERQUE, NM 87196-4484				
EXAMINER				
KEATON, SHERROD L				
ART UNIT		PAPER NUMBER		
2175				
MAIL DATE		DELIVERY MODE		
10/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,878

Applicant(s)

METEYER, JEFFREY S.

Examiner

Sherrod Keaton

Art Unit

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to the filing of 6-20-08. Claims 1-16 and 18-20 are pending and have been considered below:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4-7, 10, 13-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Wong et al ("Wong" US 6931387 B1).

Claims 1 and 10: Wong discloses a method and system comprising:

accessing an electronic portal that collects and provides ergonomic tool data to a user of said portal, and
compiling ergonomic data based on a physical input provided by user to said electronic portal in order to generate ergonomic tool data to user based on

physical input

Associating a search engine with said electronic portal, wherein said search engine is accessible by said user through said electronic portal to automatically identify tool data that are potentially ergonomically appropriate for said user based on said ergonomic data compiled based on physical input provided by user. (Abstract; Column 4, Lines 60-Column 5, Line 7; Column 6, Lines 57-Column 7, Line 45). Wong allows user physically input information this information is collected and compared and product "tool" recommendations are made available to user based on input.

Claims 4 and 13: Wong discloses a method and system as in Claim 1 above and further discloses generating specific ergonomic data in response to compiling ergonomic data based on physical input provided by user to electronic portal in order to generate ergonomic tool data to user based on physical input (Abstract; Column 4, Lines 60-Column 5, Line 7; Column 6, Lines 57-Column 7, Line 45). Wong allows user physically input information this information is collected and compared and product "tool" recommendations are made available to user based on input.

Claims 6 and 15: Wong discloses generating specific ergonomic data in response to compiling ergonomic data based on physical input provided by user to electronic portal in order to generate ergonomic tool data to user based on physical input as in Claim 4

and 13 above and further discloses analyzing and comparing said specific ergonomic data to data maintained within a database to thereby provide particular tool data matching said specific ergonomic data associated with said user allowing said user to select an appropriate tool. (abstract; Column 11, Lines 28-45).

Claims 8 and 18: Wong discloses generating a plurality of risk factors for said user based on an analysis of ergonomic data compiled based on physical input provided by said user to said electronic portal in order to generate ergonomic tool data to said user based on said physical input as in Claims 7 and 16 above and further discloses

- a.) a high risk factor, wherein ergonomic injury is likely to said user
- b.) a medium risk factor, wherein on a short term basis, a substantial risk to said user is unlikely to occur
- c.) a limited risk factor, wherein said user faces a highly unlikely risk of injury (Column 2, Lines 60-67),
- d.) the plurality of risk factors being graphically represented for user on a display screen as a graphical representation of the human body.

(Column 11, Lines 12-31; Column 15, Line 58-Column 16, Line 2)

Claim 9 and 19: Wong discloses a method and system as in Claims 1 and 10 above wherein said electronic portal is a web portal allowing said user of said web portal to funnel said ergonomic tool data to an online marketplace offering said user a plurality of tool options based on said ergonomic tool data (Column 15, Lines 58-63; Column 7, Lines 37-40). Here analysis can be compiled and compared over the internet and analysis can be returned in recommendations of products "tools" based on information.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al ("Wong" US 6931387 B1).

Claims 7 and 16: Wong discloses a method and system as in Claim 1 above and further discloses generating a plurality of risk factors for said user based on a cross reference analysis of ergonomic data compiled based on physical input provided by said

user to said electronic portal in order to generate ergonomic tool data to said user based on said physical input (Column 11, Lines 13-31). However does not explicitly disclose a known physical profile of said user but it would have been an obvious technique of improving the system and would have been within the ordinary capabilities of one skilled in the art to include physical profile alongside the physical task profile of Wong (Column 9, Lines 39-50) because the physical profile would be inter-related with the effect of the task performed by the specific user.

5. Claims 2, 3, 5, 11, 12, 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al ("Wong" US 6931387 B1) in view of Burdea et al (US 5429140).

Claims 2 and 11: Wong discloses a method and system as in Claims 1 and 10 above but does not explicitly disclose

- a.) generating an interactive graphic for displayed in three spatial dimensions for display on a display screen for said user.
- b.) prompting said user to interact with said interactive graphic displayed in three spatial dimensions utilizing a user input device.
- c.) collecting ergonomic data from said user based on input provided by user through said user input device in association with said interactive graphic displayed in three spatial dimensions displayed on said display screen for said user

However Burdea discloses a virtual reality interactive system that utilizes an input to collect ergonomic data (Abstract; Column 4, Lines 4-42). Therefore it would have been obvious to one having ordinary skills in the time of the art to add the interactive graphic to Wong. One would have been motivated to add the interactive graphic because it adds clarity to instructions. Now the instructions can be relayed verbally or visually.

Claims 3 and 12: Wong and Burdea disclose a method and system as in Claim 2 and 11 and Burdea further discloses a user input device that comprises a motion detector configured with a plurality of pressure and weight sensors (Column 4, Lines 4-42).

Claims 5 and 14: Wong discloses generating specific ergonomic data in response to compiling ergonomic data based on physical input provided by user to electronic portal in order to generate ergonomic tool data to user based on physical input as in Claim 4 and 13 above but does not explicitly disclose specific ergonomic data comprising a plurality of output variables representative of weight, twist, grasp, pull, push and motor skills of user. However Burdea discloses a virtual reality interactive system that utilizes an input to collect ergonomic data (Column 4, Lines 15-30). Therefore it would have been obvious to one having ordinary skills in the time of the art to add the interactive graphic to measure the outputs in Wong as taught by Burdea. One would have been motivated to measure the outputs to collected detailed data to provide efficient and accurate recommendations.

Claim 20: Wong discloses a system comprising:

an electronic portal that collects and provides ergonomic tool data to a user of said portal, a compilation module for compiling ergonomic data based on physical input provided by said user to said electronic portal through a user input device in order to generate ergonomic tool data to said user based on a said physical input, an analysis module for analyzing and comparing said specific ergonomic data to data maintained within a database to thereby provide particular tool data matching said specific ergonomic data associated with said user; and a generating module for automatically generating a plurality of risk factors for said user based on a cross reference analysis ergonomic data compiled in response to physical input provided by said user to said electronic portal via said user input device in order to generate ergonomic tool data based on said physical input. (Abstract; Column 4, Lines 60-Column 5, Line 7; Column 6, Lines 57-Column 7, Line 45; Column 11, Lines 13-31). Wong allows user physically input information this information is collected and compared and product "tool" recommendations are made available to user based on input.

However Wong does not explicitly disclose a known physical profile of said user but it would have been an obvious technique of improving the system and would have been within the ordinary capabilities of one skilled in the art to include physical profile alongside the physical task profile of Wong (Column 9, Lines 39-50) because the

physical profile would be inter-related with the effect of the task performed by the specific user.

Nor does Wong explicitly disclose wherein said electronic portal is displayed graphically in three spatial dimension a display screen for said user;

a user input device, wherein said user is prompted via said display screen to interact with an interactive graphic displayed in three spatial dimensions utilizing said user input device; However Burdea discloses a virtual reality interactive system that utilizes an input to collect ergonomic data (Abstract; Column 4, Lines 4-42). Therefore it would have been obvious to one having ordinary skills in the time of the art to add the interactive graphic to Wong as taught by Burdea. One would have been motivated to add the interactive graphic because it adds clarity to instructions. Now the instructions can be relayed verbally or visually.

Burdea also discloses wherein said specific ergonomic data comprises a plurality of output variables representative of weight, twist, grasp, pull, push and motor skills of said user (Column 4, Lines 15-30). Therefore it would have been obvious to one having ordinary skills in the time of the art to add the interactive graphic to measure the outputs in Wong as taught by Burdea. One would have been motivated to measure the outputs to collected detailed data to provide efficient and accurate recommendations.

Response to Arguments

6. Applicant's arguments have been fully considered but they are not persuasive.

Per Claims 1 and 10, Applicants argue that a Wong does not provide a portal that collects or provides data or generation of ergonomic tool data. Examiner disagrees. Wong shows that the data is collected and this information is taken and looked at by engine (portal, because portal is merely a way to access or make information available) and then through that engine recommendations are made to the user. (Column 11, Lines 48-56; Column 7, Lines 36-40). It is clear that Wong can generate and collect ergonomic (product) tool data as disclosed (Column 4, Line 65-Column 5, Lines 4; Column 7, Lines 65-Column 8, Lines 2). With this being the case when Wong provides a product recommendation the product will have a direct correlation to the ergonomic data which has been collected otherwise the recommendation would be ineffective for its' intended purpose.

Secondly, the applicants argue that Wong data is not based on a physical input. Examiner disagrees. This claim limitation only requires that information be **based on** which does not require direct interaction from the user. Therefore information collected pertaining to a physical interaction which is input covers the limitation as written.

Applicants also argue that a user must interact with a tool in question. However this limitation is not recited anywhere in the rejected claim 1. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant is encouraged to include this limitation if they wish to further clarify differences between invention and prior art of record.

Per claims 4 and 13, Examiner has previously clarified their position pertaining the generating of tool data and physical in the remarks of Claims 1 and 10. Again applicants argue that the invention is reflective of the tool and users interaction, but do not claim this direct interaction in the claims.

Per Claims 6 and 15, Applicants argue that there is no comparing of data. Examiner disagrees. To further expound on the comparison of data examiner points to (Column 7, Lines 28-45; Column 15, Lines 25-28). Its shows here that information is collected to define a solution and therefore there must be some comparison (deterministic approach) with stored data or previous results, etc. in order to provide a product (tool) recommendation its feels is compatible with ergonomic risk it is required to resolve. Applicants argue that the comparisons are made as a fitting process however do not express this anywhere in the claim.

Per Claims 8 and 18, Applicants argue that risk factors are not clearly shown in Wong. Examiner disagrees. Examiner also points to (Column 5, Lines 65-67; Column 7, Lines 51-60) which disclose risk rankings. Secondly, applicants argue that the mannequin does not serve the same purpose however it is clear that the mannequins' automation purpose is to automate the job analysis. Examiner notes that its is clear that the job analysis includes the risk associated with the job in question, therefore within this umbrella of analysis being automated the risk would be a vital component.

Per Claims 9 and 19, Applicants argue that Wong does not provide a web portal and online marketplace. Examiner disagrees. Wong discloses that information is conveyed over the internet which can be sent a server having a knowledge base (Column 15, Lines 25-36). This provides user with a web portal and an online marketplace. The information is sent over the internet to retrieve information this is the web portal and secondly the server with a knowledge base which is connected via the network serves as the online marketplace because it has a variety of data such as product recommendations which then can be offered to the user.

Per Claims 7 and 16, Examiner points to (Column 5, Line 48-Column6, Line 25) to further demonstrate the cross analysis found in Wong. Examiner has relied upon KSR reasoning of obviousness as found in rationale C. Wong's invention deals entirely with ergonomic stress to a users' body, and has clearly disclosed creating a job profile to test against these risk (Column 9, Lines 39-50). Therefore keeping within the scope of the invention a physical profile of a user would be critical when dealing with comparisons related a job (i.e. A man 6'2 , 210 pounds vs. A woman 5'3, 135 pounds would not have equivalent ergonomic stress and risk and in order to order to provide a quality recommendation the system must be able to distinguish the between the two). Being that the system is able to provide a job profile it would be an obvious and simple enhancement to provide a physical profile and could be easily performed by a skilled artisan.

Per Claims 2 and 11, Applicants argue that Burdea does not disclose a graphic display or 3-d object. Examiner disagrees. Examiner points to (Column 4, Lines 42-67)

which discloses a virtual object displayed on a screen. In the examiners' opinion Burdea does provide a three dimensional perspective with the depth of the digits of the hand in Fig. 3 as an example. In addition applicants argue that there is no prompt for user to interact. Burdea does disclose some type of prompt (Column 3, Lines 30-31). Examiner also makes note that when the user interacts with the system it requires some type of prompt whether it be from the system, a facilitator, or the user themselves and because the claim does not explicitly point out how it is performed it is left open to the broadest reasonable interpretation.

Per Claims 3 and 12, Applicants argue that Burdea does not disclose pressure and weight sensor devices as claimed in the invention. Examiner points to (Column 4, Lines 15-20) and notes in order to measure position and force there is a direct correlation to pressure in addition to the weight sensors that are disclosed.

Per claims 4 and 13, In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition Burdea discloses measuring force (stress) data on the different appendages which would fall under ergonomic data. This data could be used to further rehab or in combination with Wong provide data for product (tool) recommendation. Burdea also discloses that it can take measurements pertaining to appendages which all account for the output variables claimed.

Per claim 20, Examiner has addressed limitations of Claim 20 throughout remarks presented above.

Conclusion

Applicants amendments necessitated the new ground(s) of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherrod Keaton whose telephone number is 571) 270-1697. The examiner can normally be reached on Mon. thru Fri. and alternating Fri. off (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Bashore can be reached on 571-272-4088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3800.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair->

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SLK

9-25-08

/WILLIAM L. BASHORE/
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